

MINUTES OF THE SOLID WASTE BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A
Indianapolis, Indiana
March 21, 2006

The meeting was called to order by Mayor William Graham, Chairperson, at 1:40 p.m. Those present for all or part of the meeting were:

- Mr. Michael Carnahan
- Mr. Rick Dyar
- Mr. Chuck Himes
- Mr. Kerry Stepter
- Dr. Lenore Tedesco
- Mr. Howard Cundiff (Proxy, State Department of Health)
- Mr. Tom Hohman (Proxy, Department of Natural Resources)
- Ms. Betsy Villwock, (Proxy, Lieutenant Governor's Office)
- Ms. Pamela Fisher (Proxy, Indiana Economic Development Corporation)
- Ms. Deborah Albright, Board Counsel

A quorum was present.

In addition, the following IDEM staff members were present for all or part of the meeting:

- Mr. Mike Dalton, Chief, Rules, Planning, and Outreach Section
- Ms. Lynn West, Rules, Planning, and Outreach Section
- Mr. Steve Mojonnier, Rules, Planning, and Outreach Section
- Ms. Kiran Verma, Rules, Planning, and Outreach Section
- Ms. Marjorie Samuel, Rules, Planning, and Outreach Section
- Ms. Ann Long, Office of General Counsel
- Mr. Jason Murdoch, Science Services Branch, Chemical Support Group A
- Mr. George Ritchotte, Compliance and Response Branch, Industrial Waste Section #1
- Mr. Roy Harbert, Remediation Services Branch, Leaking Underground Storage Tank Section
- Mr. Daniel Murray, Office of Pollution Prevention and Technical Assistance

1. Approval of Minutes

Mayor Graham asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of January 17, 2006. There being none, Mr. Chuck Himes moved that the minutes be approved as presented. Mr. Rick Dyar seconded. The motion passed unanimously.

2. Assistant Commissioner's Report

Mayor Graham then invited Mr. Bruce Palin, Assistant Commissioner, to address the Board. Mr. Palin thanked the Board for attending the meeting in spite of inclement weather. He then asked Ms. Lynn West for her announcements.

Ms. West distributed the latest rules project list and specifically commented on the following rules:

#06-70 - Transfer Station Change Rule at 329 IAC 11 - This new rulemaking will help to make the existing rules more clear, concise and better organized.

#05-181 - E-Waste Rule - There will be a workgroup meeting to discuss the draft rule language on Wednesday, April 12, 2006, 1:30 p.m., at the Belmont Avenue Treatment Plant, Indianapolis. She urged Board members to attend.

Lead Acid Battery Rule - This rule has been reassigned to Kiran Verma.

Ms. West then discussed arrangements for the Board training on May 16, 2006. Finally, Ms. West announced that longtime Board member representing environmental interests, Linda Cosgrove, resigned from the Board. In response to a question from an audience member, she responded that the training is just for Board members. She also took a moment to remind Board members to wear casual clothes, and hard-toed boots if available. Please see pages 4 through 7 of the official transcript of this meeting for a complete account of Ms. West's presentation.

Mayor Graham then announced the following rulemaking actions:

- Final Adoption of Amendments to 329 IAC 3.1, the 2005 Hazardous Waste Annual Update, LSA #05-66. The hearing was noticed in the Indiana Register on January 1, 2006, and can be found at 29 IR 1268. The 2005 Hazardous Waste Annual Update, as a proposed rule, was published in the January 1, 2006, Indiana Register at 29 IR 1260 and is included in the Board packet for this meeting.
- Preliminary Adoption of Inspection and Cleaning of Contaminated Properties, Illegal Drug Laboratories Rule, LSA #05-182. The hearing was noticed in the Indiana Register on January 1, 2006, at 29 IR 1404 and the draft rule was published in the Indiana Register on January 1, 2006, at 29 IR 1396.
- Preliminary Adoption of Amendments to 329 IAC 4.1, Concerning the Regulation of Wastes Containing PCB's rule. The hearing was noticed in the Indiana Register on December 1, 2005, and may be found at 29 IR 1067 and the draft rule was published in the Indiana Register on December 1, 2005, at 29 IR 1055.

Mayor Graham said that the stated rules are available for public inspection in the Indiana Department of Environmental Management File Room, located on the 12th floor of the Indiana Government Center North. Instructions were given to the public regarding offering oral statements and comments to the Board; the court reporter was affirmed.

3. Final Adoption 2005 Hazardous Waste Annual Update

Mayor Graham announced that amendments to rules of the Board at 329 IAC 3.1, the 2005 Hazardous Waste Annual Update, would now be considered for final adoption. He introduced the proposed rule as Exhibit A, and Exhibit A1, the list of suggested changes into the record. He then asked Mr. Steve Mojonnier to address the Board.

Mr. Mojonnier reviewed the history of the rulemaking that included three comment periods. He then reviewed the changes to the hazardous waste management regulations and rules for used oil management that were published by the U.S. EPA in the Federal Register between April 22, 2004, and August 5, 2005. He specifically commented to the Board that the wastewater treatment sludge described in the proposed rule will be considered nonhazardous when managed in accordance with the requirements in the proposed rule. For a verbatim account of Mr. Mojonnier's presentation, please see pages 9 through 11 of the official transcript of this meeting.

Mayor Graham noted that there were no requests for public comment on the rule. He then concluded the hearing. There were no questions from the Board or discussion. Mayor Graham then asked for a motion to adopt Exhibit A1, the amendment to the rule, as presented. Mr. Rick Dyar so moved and Mr. Chuck Himes seconded. The motion passed unanimously. Mayor Graham asked for a motion to adopt the final rule, as amended. Mr. Rick Dyar so moved and Mr. Chuck Himes seconded. The motion passed unanimously.

4. Preliminary Adoption Inspection and Cleaning of Contaminated Properties, Illegal Drug Laboratories at 329 IAC 17

Mayor Graham announced that 329 IAC 17, Inspection and Cleaning of Contaminated Properties, Illegal Drug Laboratories Rule, would now be considered for preliminary adoption. He introduced the draft rule as Exhibit B into the record. He then asked Mr. Steve Mojonnier to address the Board.

Mr. Mojonnier explained that the rule is being proposed as required by IC 13-14-1-15. He also discussed Senate Enrolled Act 444, enacted to provide a variety of remedies for problems related to illegal use and manufacture of methamphetamine. Part of SEA 444 relates to the definition of chemicals used and waste produced and then directs IDEM to maintain a list of persons with expertise in the inspection and cleanup of property contaminated by these chemicals and waste. IDEM may also adopt rules to set criteria for these qualified persons and regulate the inspection and remediation of contaminated property. Mr. Mojonnier described some of the health, social and economic effects of illegal methamphetamine manufacture and the variety of methods used in their illegal manufacture. He reviewed the results of research that detailed concentrations of contaminants found from the illegal manufacturing process. While no current health data exists to identify a safe level of environmental exposure to methamphetamine, the draft rule proposes a level of 1.0 micrograms of drug per square foot to represent a thorough cleanup. He said that this level is used in six other states. Mr. Mojonnier said that when research results in credible health-based decontamination levels, the rule will be reopened

to substitute the new health-based numbers for those currently proposed. Mr. Mojonnier said that the proposed decontamination level will undoubtedly result in much discussion.

Mr. Mojonnier then described the chain of events that occurs when an illegal drug lab is discovered. The initial closure begins when the local law enforcement agency takes control of the property and then notifies the local health department. The local health department determines if there is a health hazard and monitors the property to ensure that the property is not reoccupied until it is cleaned. Because no other regulation exists, the proposed rule follows up by providing a list of qualified persons to perform cleanup, standards to meet to ensure a thorough job and a certification to obtain prior to reoccupancy. Mr. Mojonnier said that contaminated vehicles could be scrapped without cleanup, but a vehicle could not be resold without being cleaned up to the same standard as a previously occupied property. Outbuildings, storage buildings, and open fields would not require a cleanup.

Mr. Mojonnier also said that the rule provides standards for qualified persons to meet in order to be listed by IDEM. See pages 22 through 24 of the official transcript of this meeting for a detailed description of the requirements to acquire an IDEM listing. For a verbatim account of Mr. Mojonnier's presentation, please see pages 13 through 26 of the official transcript of this meeting.

Mayor Graham then asked for comments and questions from the Board. There were numerous comments and questions. Mr. Himes asked for more information on the cleanup. Dr. Lenore Tedesco has asked for more attention to clean up of outbuildings and soils. Her concern is the possible risk that contamination outside of the occupied property poses a risk to children who typically play outside. Mr. Mojonnier said that these concerns would be addressed. Mr. Tom Hohman asked about testing contamination levels on various surfaces that differ in how porous they are. Mr. Jason Murdoch, a chemist with IDEM Science Services Branch, described some of the methods for sampling and testing and said that research into how other states are handling this is ongoing. Mr. Kerry Stepter expressed concern about the lack of specificity regarding cleanup procedures and testing. He said that a property owner might be more likely to choose the least expensive cleanup and testing, rather than what would be best for his property. Mr. Mojonnier said that these issues are still being researched. He briefly described some types of sampling methods and emphasized that sampling methods and cleanup procedures are two separate issues and that contractors have a wide variety of cleanup methods that must meet final performance standards. Again, Mr. Mojonnier said that health-based levels need to be established. Mayor Graham said the Southern Indiana Task Force estimated that the cost of a meth lab cleanup is at least \$50,000. He also said that in his community most of the meth labs are in motel rooms or in fields. He also worried that people with rental properties might try to hide the illegal activity because of the economic hardship. Mr. Stepter said that it was a big issue in his community as well. Please see pages 26 through 37 of the official transcript of this meeting for a verbatim account of Board questions and discussion.

Mayor Graham then called for public comment. The following individuals addressed the Board on this rulemaking:

- a. Rita Hope, Indiana State Department of Health
- b. Andrew Armstrong, Indiana Apartment Association
- c. Tony Burrus, Allen County Solid Waste Management District
- d. Betsy Swearingen, Johnson County Health Department

Ms. Rita Hope asked for the inclusion of “and the state health department” after the words “local health department” wherever “local health department” occurs in the rule. It would aid local health departments by having the authority to call upon the state health department when resources are lacking. (See page 38 of the official transcript of this meeting.)

Mr. Andrew Armstrong said that owners of rental properties are also victims of the illegal operation of meth labs because they bear the initial cost of contamination testing and cleanup of their property. These costs eventually get passed on to residents by rental increases. Mr. Armstrong requested that rules should be clear in identifying what constitutes contamination so that in multi-family housing units, the economic impact may be contained. He also stated that when a suspect property is actually not contaminated he would like to see a certification that says that the property is not contaminated. Mr. Armstrong requested that owners should be able to be involved in at least part of the cleanup process as a way of keeping costs down. He also recommended some restraint be placed on the inspector to be very precise when identifying the work that needs to be done to attain decontamination. Finally, Mr. Armstrong requested that the rule protect owners of contaminated property from civil suit when an owner has taken proper steps to decontaminate the affected property. Please see pages 38 through 43 of the official transcript of this meeting for Mr. Armstrong’s comments.

Considerable discussion ensued regarding whether a property owner can clean up his or her own property. Mr. Mojonnier clarified that a property owner can do the cleanup but can’t do an inspection to certify successful decontamination. Of greater concern is how extensive the contamination becomes within a multi-family dwelling such as an apartment building. Should there be a certification declaring an area not contaminated while another area that is cleaned up be certified as decontaminated? While acknowledging that the rule is in an evolving stage, there was a request to be more specific about how to determine contamination of adjacent dwellings. There was also a question about the process of leading up to cleanup and certification. Mr. Mojonnier reviewed the process:

1. Law enforcement shuts down the lab and removes chemicals and equipment and then notifies the health department;
2. The health department determines the safety of a building and may prohibit habitation until cleanup and certification have been attained.

From this point on, Mr. Mojonnier said that a “formal determination” was not written. The rule says that property must be decontaminated and certified as clean

prior to reoccupation or transfer of ownership. IDEM will provide a list of qualified individuals to perform cleanup and certification.

Mr. Tony Burrus, Allen County, Public Safety Environmental Director, said that the State Police lab typically secures hazardous materials. Ms. Betsy Swearingen, Johnson County Health Department, said that they receive a list from the State Police that specifies if there was an actual working lab or if occupants of a building simply possessed materials that could produce methamphetamine. Cleanup procedures are then developed from that information.

Finally, Mayor Graham said that these issues are going to be carefully scrutinized. Increased concern over the negative impact of methamphetamine production ensures attention at the local level. Please see pages 37 through 60 of the official transcript of this meeting for a verbatim account of public comment and continued Board discussion.

When there were no further questions from the Board or discussion. Mayor Graham asked for a motion to adopt the rule, as presented. Mr. Dyar so moved and Mr. Himes seconded. The motion passed unanimously.

5. Preliminary Adoption of Amendment to 329 IAC 4.1 Regulation of Wastes Containing PCBs

Mayor Graham announced that amendment to 329 IAC 4.1 concerning Regulation of Wastes Containing PCBs Rule. He introduced the draft rule as Exhibit C into the record. He then asked Ms. Kiran Verma to address the Board.

Ms. Verma said that there was a correction on the fiscal impact memorandum. The second sentence should read “There are no new substantive requirements being proposed at this time, so no new costs are expected as a result.”

Ms. Verma briefly reviewed the history of the rulemaking and explained the changes that were made as a result of response to public comment. She then outlined other changes that would clarify and streamline other sections of the rule. The amendment would propose no new requirements and actually make the PCB rules more accurate and easy to use and some limited cost savings could result. Please see pages 62 through 64 of the official transcript of this meeting for a verbatim account of Ms. Verma’s presentation.

Mayor Graham asked for questions from the Board. Mr. Himes asked for clarification regarding a “stand-alone” requirement. Mr. George Ritchotte, Compliance and Response Branch, Industrial Waste Section #1, offered some background and clarification on that point.

Mayor Graham noted that there was no request for public comment so the hearing was concluded. There were no further questions from the Board or discussion. Mayor Graham then asked for a motion to adopt the rule, as presented. Dr. Lenore Tedesco so moved and Mr. Kerry Stepter seconded. The motion passed unanimously.

6. Mayor Graham said that the nonrule policy document (NPD), W-0046 “RISC User’s Guide Chapter 3 - UST, LUST and ELTF Programs,” would be presented.

Mayor Graham said that the NPD has been made available for a minimum of 60 days for inspection and comment. The NPD is also available for public inspection, comment and copying in the file room of the Department of Environmental Management, 12th floor, Indiana Government Center North, Monday through Friday between the hours of 8:30 a.m. and 4:30 p.m. The NPD was presented by Mr. Roy Harbert, Senior Environmental Manager, Leaking Underground Storage Tank Section, Office of Land Quality.

Mr. Harbert said that the NPD was developed as a response to needs determined by staff, rule changes and also comments from the regulated community. The changes in the user’s guide make it more user friendly with report formats and flow charts to track progress. Clarification of risk issues related to Leaking Underground Storage Tanks was also accomplished. The biggest changes came in offering standardized reports and plan formats. It is hoped to have a system where an owner/operators may look at different requirements in a format that makes it easy to identify what they need to do. There was also a change from Word to Excel, as a response to a public request. Please see pages 67 through 72 for a detailed account of Mr. Harbert’s comments. Mr. Himes commented that he found the NPD difficult to read and wondered about the numerous acronyms. Mr. Palin said that this one section was geared toward technical consultants and that other parts of the manual provided a glossary of acronyms. There were no further comments.

Mayor Graham said that written comments on this NPD should be sent within 30 days to Mr. Bruce Palin. If the NPD is changed, it would again be placed in the file room for another comment period and presented to the Board. The NPD RISC User’s Guide Chapter 3 - UST, LUST and ELTF Programs, will be effective 30 days from today’s presentation, April 20, 2006.

7. Mayor Graham introduced Mr. Daniel Murray, Assistant Commissioner, Office of Pollution Prevention and Technical Assistance to present an overview of the Indiana Environmental Stewardship Program rulemaking.

Mr. Murray explained that this unique rulemaking will apply to air, water and land program areas and will be presented to each board for approval. Mr. Murray said that the program is based on a national program called the National Environmental Performance Track. The Indiana Environmental Stewardship Program encourages entities to allocate resources toward environmental programs and provides incentive for companies to not only get in compliance with environmental regulations but to become proactive in environmental improvement. There are eligibility requirements to get in the program and also valuable incentives, such as regulatory flexibility, and improved relationship with IDEM and U.S. EPA. Mr. Murray said that this program provides real business value through recognition and regulatory flexibility. Mr. Murray explained that rules are still being developed. A second notice is anticipated to be published in the June Indiana Register. For a complete account of Mr. Murray’s remarks, please see pages 72 through

89 of the official transcript of this meeting. Mr. Himes asked if it was expected that companies interested in this program will already be qualified under the ISO and also asked Mr. Murray to define a “mid-sized company.” Mr. Murray said that he expected that ISO companies would be willing to make the commitment to the Indiana Environmental Stewardship Program. He also said that he considered a medium-sized company to consist of about 150 to 250 employees.

Mayor Graham asked if there was anyone who wished to address the Board on topics of interest and potential rulemakings in Title 329. There was no public comment.

8. Adjournment

Mayor Graham adjourned the meeting at 4:00 p.m.

The next meeting will be May 18, 2006, at 1:30 p.m., at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana.

TECHNICAL SECRETARY